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EXAMINER

MASKULINSKI, MICHAEL C

ART UNIT PAPER NUMBER

2113

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/667,616

Applicant(s)

LINDSAY ET AL.

Examiner

Michael C. Maskulinski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-17 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-28 is/are allowed.
- 6) ☒ Claim(s) 9-17 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/8/04</u> . | 6) <input type="checkbox"/> Other: _____  |

**Non-Final Office Action**

***Specification***

1. It is noted that this application appears to claim subject matter disclosed in prior Application No. 09/563,019, filed April 29, 2000. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is

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considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 9-17 and 21-29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No.

6,654,908 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following.

Referring to claim 9, claim 8 of U.S. Patent 6,654,908 B1 discloses a method of accessing data, comprising the steps of: receiving first data; incrementing a first register containing a count value in response to said first data to provide an incremented count value; storing, in response to a first condition of a flag, (i) said incremented count value in a second register and (ii) said first data in a memory; setting said flag to a second

condition in response to said first data; reading, on plural occasions, different portions of said first data from said memory; comparing values stored in said second register prior to and after said reading step and, in response, selectively processing said first data stored in said memory; and in response to said comparing step resetting said flag back to said first condition only if the value read from said second register for use in comparing step matches the value stored in said second register. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 8 of U.S. Patent 6,654,908 B1 includes all of the limitations in claim 9 of the instant application. With regard to the additional limitations in claim 8 of U.S. Patent 6,654,908 B1, which are not included in claim 9 of the instant application, the omission of these limitations in claim 9 of the instant application is an obvious expedient since the remaining limitations in claim 8 of U.S. Patent 6,654,908 B1 perform the same function as the limitations in claims 9 and 15 of the instant application (*In re Karlson*, 136 USPQ 184 (CCPA 1963)).

Referring to claim 10, claim 9 of U.S. Patent 6,654,908 B1 discloses a step of setting said flag to a second condition in response to said first data.

Referring to claim 11, claim 10 of U.S. Patent 6,654,908 B1 discloses the steps of: reading a first data value stored in said second register; reading said first data from said memory; reading a second data value stored in said second register and comparing said first and second data values.

Referring to claim 12, claim 11 of U.S. Patent 6,654,908 B1 discloses a step of processing said first data in response to a result of said comparing step.

Referring to claim 13, claim 12 of U.S. Patent 6,654,908 B1 discloses the step of resetting a condition of said flag only if said second data value matches the first data value.

Referring to claim 14, claim 13 of U.S. Patent 6,654,908 B1 discloses a plurality of steps of reading portions of said first data from said memory and steps of comparing values read from said second register and, in response, selectively processing said first data.

Referring to claim 15, claim 8 of U.S. Patent 6,654,908 B1 discloses setting said flag to a second condition in response to said first data; reading, on plural occasions, different portions of said first data from said memory; comparing values stored in said second register prior to and after said reading step and, in response, selectively processing said first data stored in said memory; and in response to said comparing step resetting said flag back to said first condition only if the value read from said second register for use in comparing step matches the value stored in said second register.

Referring to claim 16, claim 14 of U.S. Patent 6,654,908 B1 discloses the steps of: detecting a non-equivalence of said values and, in response, inhibiting a processing of said first data stored in said memory.

Referring to claim 17, claim 15 of U.S. Patent 6,654,908 B1 discloses said first data includes error information and said count value includes a number of error events detected.

Referring to claim 21, claim 1 of U.S. Patent 6,654,908 B1 discloses a method, comprising the steps of: providing a token which can be atomically read and which uniquely identifies a log entry which cannot be atomically read and evaluated for change; and clearing said log entry using said token as a key; wherein said token includes an indication of a status of said log entry. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of U.S. Patent 6,654,908 B1 includes all of the limitations in claim 21 of the instant application. With regard to the additional limitations in claim 1 of U.S. Patent 6,654,908 B1, which are not included in claim 21 of the instant application, the omission of these limitations in claim 21 of the instant application is an obvious expedient since the remaining limitations in claim 1 of U.S. Patent 6,654,908 B1 perform the same function as the limitations in claim 21 of the instant application (*In re Karlson*, 136 USPQ 184 (CCPA 1963)).

Referring to claim 22, claim 2 of U.S. Patent 6,654,908 B1 discloses storing error data as said log entry and updating said token to correspond to said error data.

Referring to claim 23, claim 3 of U.S. Patent 6,654,908 B1 discloses reading said error data using said token to validate said error data.

Referring to claim 24, claim 4 of U.S. Patent 6,654,908 B1 discloses wherein said token includes an indication of an ordinality of said log entry.

Referring to claim 25, claim 1 of U.S. Patent 6,654,908 B1 discloses wherein said token includes an indication of a status of said error log entry.



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Referring to claim 26, claim 5 of U.S. Patent 6,654,908 B1 discloses ensuring only valid copies of error data are obtained corresponding to said log entry and inhibiting clearing of unrecorded data corresponding to said log entry.

Referring to claim 27, claim 6 of U.S. Patent 6,654,908 B1 discloses a step of forming a digital signature of said log entry to create said token.

Referring to claim 28, claim 7 of U.S. Patent 6,654,908 B1 discloses a step of hashing said log entry to create said token.

#### ***Claim Objections***

4. Claim 29 is objected to because of the following informalities: based upon the specification, the Examiner believes that the limitation "wherein the status is one on clear and error" should be "wherein the status is one of clear and error", and has interpreted the claim as such. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. Claims 23 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 23 recites the limitation "said error data" in line 2. There is insufficient antecedent basis for this limitation in the claim.

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8. Claim 13 recites the limitation "the value" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Tavares et al., U.S. Patent 5,247,684.

Referring to claim 9:

- a. In column 4, lines 36-39 and in Figures 6 and 7, Tavares et al. disclose the operation of the reader and writer (receiving first data).
- b. In column 4, lines 29-35, Tavares et al. disclose that the RAM comprises a first counter designated update-counter (first register containing a count value).

The writer modifies the data base record and increments the update-counter.

The reader reads the database and performs operations on the update-counter (incrementing a first register containing a count value in response to said first data to provide an incremented count value).

c. In column 5, lines 54-58, Tavares et al. disclose that the registers used in conjunction with the update-counter are the update-counter register designated register (U), the register having the value of register (U) prior to the present access transaction is designated old (U) (storing said incremented value in a second register). Further, in column 5, lines 2-3, Tavares et al. disclose when adding a record it (the write operation) increments by one the new-or-removed flag and updates the data base record in response to a write request (storing, in response to a first condition of a flag, said first data in a memory).

Referring to claim 10, in column 5, lines 7-8, Tavares et al. disclose that when deleting a record it (the write operation) increments by one the new-or-removed flag (a step of setting said flag to a second condition in response to said first data).

11. Claim 29 is rejected under 35 U.S.C. 102(e) as being anticipated by Bossen et al., U.S. Patent 6,516,429 B1.

Referring to claim 29:

a. In column 5, lines 46-47, Bossen et al. disclose that a simple counter is used to count the number of errors (a count register which maintains a count of occurrences of an error in the system).

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b. In column 5, lines 16-20, Bossen et al. disclose that if an error is a recoverable error, an error flag is set (a status register which maintains a status of the system, wherein the status is one of clear and error).

c. In column 5, lines 50-52, Bossen et al. disclose that if five unique error locations are present, the error is saved in the deconfiguration area in the NVRAM (a tag register which stores the value of the count register if the status register is clear).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tavares et al., U.S. Patent 5,247,684.

Referring to claim 11, in column 5, line 25, Tavares et al. disclose setting register (U) equal to the update-counter (reading a first data value stored in said second register). In Figure 7 and in column 5, lines 23-67, Tavares et al. disclose reading the first data from the memory. In column 5, lines 46-50, Tavares et al. disclose checking if register (U) is not equal to update-counter (reading a second data value stored in said second register and comparing said first and second data values). As can easily be

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seen, Tavares et al. teaches both the first data value and second data values.

However, Tavares et al. doesn't teach storing both values in the same register. The Examiner takes Official Notice that it is well known to use different logic in combinational circuits to accomplish the same function and it is well known to consolidate and expand registers to accomplish the same function. It would have been obvious to one of ordinary skill at the time of the invention to place the values in the registers of Tavares et al. into a single register. A person of ordinary skill in the art would have been motivated to make the modification because this is an obvious modification that is based upon design choice.

Referring to claim 12, in column 5, lines 51-52, Tavares et al. disclose that if the register (U) is equal to the update-counter then the access was successful (a step of processing said first data in response to a result of said comparing step).

Referring to claim 13, in column 5, lines 59-65, Tavares et al. disclose that after a match has been detected between the register (U) and the update-counter, old (N) is set equal to register (N) (step of resetting a condition of said flag only if said data value matches the value stored in said second register).

Referring to claim 14:

- a. In column 5, line 25, Tavares et al. disclose setting register (U) equal to the update-counter (reading a first data value stored in said second register). In Figure 7 and in column 5, lines 23-67, Tavares et al. disclose reading the first data from the memory. In column 5, lines 46-50, Tavares et al. disclose checking if register (U) is not equal to update-counter (reading a second data value stored

in said second register and comparing said first and second data values). As can easily be seen, Tavares et al. teaches both the first data value and second data values. However, Tavares et al. doesn't teach storing both values in the same register. The Examiner takes Official Notice that it is well known to use different logic in combinational circuits to accomplish the same function and it is well known to consolidate and expand registers to accomplish the same function. It would have been obvious to one of ordinary skill at the time of the invention to place the values in the registers of Tavares et al. into a single register. A person of ordinary skill in the art would have been motivated to make the modification because this is an obvious modification that is based upon design choice.

b. In column 5, lines 51-52, Tavares et al. disclose that if the register (U) is equal to the update-counter then the access was successful (in response to a compare selectively processing said first data).

14. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tavares et al., U.S. Patent 5,247,684 as applied to claim 9 above, and further in view of Smith et al., U.S. Patent 5,941,996.

Referring to claim 17:

a. In the Abstract, Tavares et al. disclose a system for updating and reading a database. However, Tavares et al. don't explicitly disclose that the database includes error information. In column 1, lines 42-45, Smith et al. disclose that in the Windows NT environment, administrative tools allow for a server connected to a plurality of workstations to collect all of the error messages in a centralized

error log. It would have been obvious to one of ordinary skill at the time of the invention to have the database of Tavares et al. acting as the centralized error log of Smith et al. A person of ordinary skill in the art would have been motivated to make the modification because *centralized error log allows for a more centralized monitoring of workstations connected together. A system administrator can only review the single central error log, rather than each individual workstation to discover if there are any problems* (see Smith et al.: column 1, lines 46-49). Further, it is well known that a database is capable of storing many different types of data, with error data being one type.

b. In column 5, lines 12-13, Tavares et al. disclose that the write operation increments the update-counter each time a record is written. If only error records are being written, then the update-counter indicates a number of error events detected.

#### ***Allowable Subject Matter***

15. Claims 21-28 are allowed.
16. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach or reasonably suggest clearing said log entry using said token as a key.
17. Claims 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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18. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach or reasonably suggest, in combination with the remaining limitations, in response to said comparing step resetting said flag back to said first condition only if the value read from said second register for use in comparing step matches the value stored in said second register.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Maskulinski whose telephone number is (571) 272-3649. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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A handwritten signature in black ink, reading "Michael Maskulinski". The signature is written in a cursive style with a large, stylized 'M' and a trailing flourish.

Michael C Maskulinski  
Examiner  
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MM